

Reviewing Comprehensive Permits



Dunstable 40B Discussion



*H & H Associates LLP
Dick Heaton
Telephone 978-779-2892
Email rbheaton@rbheaton.com*

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40B

- **Fact** — Massachusetts Supreme Judicial Court
- **Opinion** — Housing and Appeals Committee
- **Folklore** — Everywhere

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Chapter 40B — “Uneconomic”

Chapter 40B: Section 20. Definitions;

"**Uneconomic**", any condition that it makes it impossible ... to proceed and realize a reasonable return in building ... housing within the limitations of the subsidizing agency

Section 22. Whenever an application is granted with conditions that make such housing **uneconomic**, the applicant shall have the right to appeal to HAC

Chapter 40B: Section 23. Hearing by housing appeals committee;

Section 23. The hearing by the HACshall be limited to the issue of whether,in the case of an approval with conditions, such conditions make the construction **uneconomic** and consistent with local needs. If the committee finds, the conditions imposed, makes the building **uneconomic** and inconsistent with local needs, it shall order such board to modify or remove any condition or requirement so as to make the proposal no longer **uneconomic** Decisions or conditions and requirements imposed by a board of appeals that are consistent with local needs shall not be vacated, modified or removed by the committee notwithstanding that such decisions or conditions and requirements have the effect of making the applicant's proposal **uneconomic**.

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The 40B Process

Pre Receipt of Permit

- CEO or BoS given 30 days to comment
- Review and update Rules and Regulations
- Discuss Organization
- Identify Leader or leaders?
- Designate voting members
- Engage legal support
- Identify general goals

30 to 45 days

Open Hearing within 30 days

- Determine if application is complete
- Review project
- Agree on Finances
- Identify concerns—Boards, Abutters, etc
- Select Peer Reviewers
- Schedule Hearings
 - Public Health
 - Public Safety
 - Environment
 - Financial
- Evaluate options
- Prepare draft decision

3 to 18 months

Close Hearing

- Write decision (10 to 50 pages)
- Vote on decision
- File decision

40 days

Time to evaluate:

Cost:

ZBA Members:

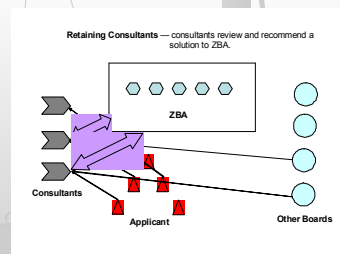
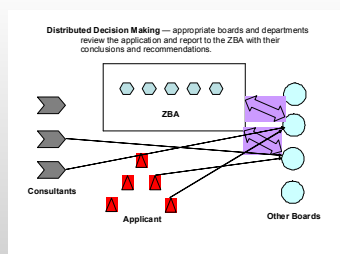
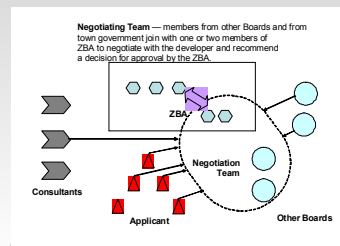
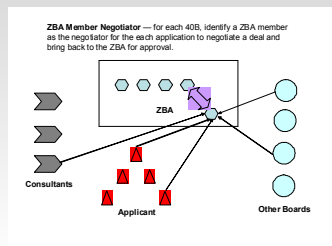
3 to 24 months

\$3K to \$50K

Majority to vote, all voting members must attend all meetings

5

Organizational Models (Refer to Workbook)



6

Reviewing a Comprehensive Permit

Chapter 40B was enacted in 1969 to help address the shortage of affordable housing statewide by reducing unnecessary barriers created by local approval processes, local zoning, and other restrictions. Its goal is to encourage the production of affordable housing in all communities throughout the Commonwealth. It has met with varying degrees of success.

Frequently, a team of highly trained full time experts show up on the agenda of the volunteer Zoning Board of Appeals requesting approval of a \$10 to \$50 million project. Just as often, the ZBA, along with other town boards, have limited time and expertise to fully address the complexities of MGL 40B. This seminar was developed to empower ZBA's to understand the full extent of the tools that are available to them and to assist towns understand how to operate within the MGL 40B statute.

It focuses on what should be considered in reviewing a comprehensive permit. Content is based on the author's ten-year experience as a member and chairperson of a ZBA, as a Selectman in a small town and as a consultant who has reviewed and consulted with towns evaluating comprehensive permits. It provides an overview of the process of how to manage the key aspects of the review.

The seminar is offered at no charge and can be adjusted to accommodate the time constraints and needs of the participants.

What a town needs to know to review a Comprehensive Permit:

Review local rules and regulations before receiving a Comprehensive Permit—

760CMR 30 and 31 take precedence over local ZBA rules and regulations, but there are some important topics that the state regulations are silent. Requiring a pro forma and establishing local funds to conduct peer reviews are two examples. Review your local rule and regulations and ensure they are update.

A ZBA has a wide degree of control and influence—

Most Boards do not appreciate the control or influence they can exert in a review. The ZBA has the latitude to deny, approve or modify a project. Modifying a project could include addressing the needs of public safety, public health or the environment, but it also can be almost anything that a community feels is important as long as the ZBA does not render the project uneconomic. Keeping the hearing open and allowing for the logical follow up on every question is critical.

MGL 40B is complex and not always logical—

It has been on the books for 35 years, has a strong lobby of developers and government bureaucracy that is continuously tweaking it to "improve" the process. This makes it extremely difficult for a volunteer Board to keep track of details. It also makes it difficult for a Board to know when they are receiving objective and accurate information.

There is no one source for all the answers—

Although different individuals believe they understand 40B, there is a large base of "folklore" about 40B. Government agencies frequently express opinions as if they are facts, but in reality, only the

Massachusetts Supreme Judicial Court has the final say. Always question the motive and ask the person who is stating a “40B truth” to articulate the source and make a conscious effort to separate fact from opinion from folklore.

It takes time and money to review a comprehensive permit—

Some projects can be reviewed in a month with existing resources, but it is not unusual for a large project (100 units or more) to take a year and half to review and can cost up to \$50K. The developer usually pays these fees. Recognizing potential time lines and possible costs allows the ZBA to determine how much time volunteer members will be able to spend on the project and how they can balance other priorities. Frequently, it is best to hire experts at the applicants expense, to do the detail work and look to the ZBA to focus on the strategic issues critical to the community. If this is the case, the ZBA should adopt local rules to ensure they have the flexibility and resources.

Don’t feel threatened by the Housing and Appeals Committee—

40B Applicants frequently play the HAC card in the review process. The facts are:

2/3 of all cases are resolved by the local ZBA

1/3 of all cases are appealed to HAC

69% were resolved before a decision was made by HAC

31% resulted in a decision by the HAC.

84% of the HAC cases ruled in favor of the developer

16% of the HAC cases ruled in favor of the municipality.

Some Towns feel the “real negotiation” starts after the ZBA makes a decision and the Applicant appeals. They structure their decision to maximize their ability to negotiate with the developer.

Determine the organization model the Town will use to evaluate the request—

When a Zoning Board of Appeals receives an application for a Comprehensive Permit, Board members need to become familiar with all aspects of the comprehensive permit as well as local and state zoning regulations. For a volunteer Board, this task can be daunting. An applicant for a comprehensive permit for a \$20 million project, frequently confronts a part time board with a “team of experts” ready to answer all questions. A board is expected to respond to the issues associated with the project and to become familiar, if not proficient, in all aspects of the project including the rules and regulations of the Massachusetts 40B statute.

To streamline this process, Boards have adopted one of five different approaches to review Comprehensive Permits. The key to a successful review is to design a process that will allow the board to balance the cost of the review with amount of time they personally would like to spend reviewing the application against the amount of control they wish to exercise. In general, these approaches represent different methods to interface to the applicant and coordinate resources within the Town.

- Central Process — Full ZBA reviews all information and makes all decisions

- ZBA Member Coordinator —a ZBA member is selected to be the coordinator for the each application and requested to negotiate and propose a recommendation to the ZBA for approval.
- Negotiating Team — members from other Boards in town join with one or two members of ZBA to negotiate with the developer and recommend a decision for approval by the ZBA.
- Distributed Decision— appropriate boards and departments are designated to review the application and report their conclusions to the ZBA
- Retaining Consultants — consultants review and recommend a solution to ZBA.

Select a leader for the evaluation—

It is important that there is a designated person or a team to keep the process on track and on schedule. Simple things like setting meeting dates and agendas are critical, but it is also important to know when to request the ZBA to take a straw vote or to close the hearing. It is also important for everyone involved in the community with an interest in the project to have an opportunity to express their opinion. If members of the community know who the leader is, they know to whom they should direct comments or questions. Likewise, it is helpful to the applicant to know whom to contact in order to obtain clarity on key questions. The leader frequently is the ZBA Chair, but it also could be a Town Administrator, ZBA Administrator, Selectman, a consultant or a designated member of the Board.

Understand the economics of the project and consider the trade offs—

If a decision of the Board is appealed to the HAC, the developer must prove the Board made the project uneconomic. Understanding the economics of a project will ensure the Board does not render the project uneconomic and therefore, has a better chance of prevailing at an Housing Appeals Committee appeal.

Determine if a Partnership can be Established with the Developer—

Most developers state they would prefer to work in a cooperative environment with the ZBA and community. Some are receptive to going a step further and establishing a partnership with a community whereas other developers are most comfortable in an adversarial relationship.

A partnership structured on the basis of financial success to all parties will include the community taking positive steps to improve the financial performance of the developer. Likewise, the developer may assist the community with infrastructure investments (roads, fire equipment and services). Profit sharing is also being used by several communities as a vehicle to achieve the objectives of both parties. Explore and determine the extent of a cooperative working relationship as a critical first step.

The 40B process is a journey and an ongoing process —

As such, it is critical to have objectives and to continuously evaluate and question them. ZBAs are encouraged to articulate an objective for the review as soon as possible and to seek out facts to verify or refute the objectives. The objectives are often simple statements —reduce density, preserve wetlands, produce more apartments or build lower pieced affordable units. Frequently, the objectives that were apparent up front are modified by the end of the process as more is learned over time.

Accurately document the decision and the intention for the future—

A Board may spend six to eighteen months evaluating the request for a comprehensive permit and must capture their findings in the decision.

There are three other documents that determine if the decisions made by the Board are implemented as intended. The Regulatory Agreement, Deed Rider and Monitoring Agreement are complimentary documents to the decision by the Town. At a minimum, a Board should:

Designate the functions in Town that will monitor the project over time. This includes approving and monitoring final construction plans and locating qualified buyers or renters.

Ensure these documents are consistent and signed by a Selectman.

Select a monitoring agent that will protect the interests of the Town and determine if there are any excess profits that should be returned to the Town.

These documents define the terms and conditions of the limited dividend corporation and the excess profits that maybe returned to the Town.



Financial Review of a Comprehensive Permit Proforma

GL 40B s.20-23 is a subsidized program designed to stimulate building of affordable housing in Massachusetts by streamlining the process for obtaining approval to build affordable housing.

The Applicant agrees that in exchange for the right to build a project under the comprehensive permit statute, G.L. c. 40B, ss. 20 – 23 the developer shall be a limited dividend corporation and shall return all excess profits to the community for use in building additional affordable housing.

When reviewing a Comprehensive Permit, the Board of Appeals has broad authority to impose conditions on the project as long as the conditions do not render the project uneconomic. The burden of proving the conditions “uneconomic” rests with the applicant. At issue, for the Board of Appeals, is to determine whether the conditions imposed upon a comprehensive permit will render the project “uneconomic” and thereafter subject to reversal by the Housing Appeals Committee.

Therefore, there are four reasons for the Board of Appeals to review and understand the proforma:

1. If the Board of Appeals approves a comprehensive permit with conditions, it must determine if the cost of these conditions will impact the profitability of the project. It would be unreasonable for the board to make a decision to impose a condition on the project without knowing the impact on profitability. Imposing conditions may make the project uneconomic and could place Board of Appeals at risk and if appealed to the HAC.
2. Under Chapter 40B case law, a limited dividend developer has been defined as a developer who is willing to enter into an agreement which limits the developers “profit” and agrees to return any excess profits to the community for use in building additional affordable housing. Case law suggests, the Board should review the profit limitation, especially since any excess profit will be returned to the town. It should consider defining the profit limitation in more detail than it is now defined in the regulatory agreement. This can be millions of dollars.

3. *The most successful developments occur when all parties (Subsidizing Agency, Developer and the Municipality) understand their respective roles and responsibilities. While the financial implications of all projects are different, common to each is the presumption that each party is able to achieve their respective beneficial interests. Therefore, in order to develop a successful project, it is critical that all parties structure a financial agreement that clearly and unequivocally defines the role of each party.*
4. *85% of all comprehensive permits are resolved at the local level without a decision rendered by the Housing and Appeals Committee. Understanding the proforma and entering into informed negotiations based on the proforma is prudent.*

The profit limitation is a function of the subsidizing agency and the type of project being developed. In the case of for-sale housing, profit has generally been defined as the amount of net cash available to the developer in excess of the total development costs, usually 15% to 20%. In the case of rental housing, profit has generally been defined as the annual amount of distributable cash flow from operations of the property, typically an IRR or ROE of 10%.

However, the definition of “profit” has not been clearly or consistently defined in all affordable housing programs in terms of both the method of calculation and the specific threshold levels below which a project would be viewed as “uneconomic”. The specific circumstances of a project will determine the conclusion.

The following steps are suggested to be taken to evaluate a proforma:.

1. Determine the appropriate definition of “economic” for the project. This usually is Return on Equity (ROE), Internal Rate of Return (IRR) or Profit before Tax (PBT).
2. Define the appropriate benchmark for the project that establishes a measurement.
3. Evaluate the project to determine if the costs are realistic.
4. Determine the ROE, IRR or PBT of the Project from the proforma.
5. Create a "what if model" computer model of the Project to determine the financial impact of any conditions they may placed on the project and determine under what conditions profits maybe returned to the community.

Generally, the review process takes approximately two weeks. Fees are usually paid by the Applicant as part of the peer review fee.

Attached is a sample report of a typical review of a “for sale” project.



Auditing a Comprehensive Permit

Chapter 40B was enacted in 1969 to help address the shortage of affordable housing statewide by reducing unnecessary barriers created by local approval processes, local zoning, and other restrictions. Its goal is to encourage the production of affordable housing in all communities throughout the Commonwealth. It has met with varying degrees of success.

The Town of Boxborough recently settled a lawsuit with a 40B developer and received a payment of \$1.18 million. The developer, who formed a limited liability corporation, agreed to limit the corporation's profits to 20 percent of the total development cost. The lawsuit alleged that the applicant hired their own companies (and companies in which their wives had an interest) and then overpaid the companies for work on the project thus earning a 45 percent profit.

Mr. Heaton of H&H Associates assisted the Town of Boxborough reviewing this case and offers his services to Towns interested in reviewing and auditing 40B projects.

Auditing Services Provided

Auditing services determine if a limited dividend corporation has operated within the limits as defined by Chapter 40B and the decision the Board rendered in the comprehensive permit decision.

Profits levels for the limited dividend corporation are typically defined in the decision of the Board as well as in the regulatory and monitoring agreement of the project. In the case of condominiums and single family homes the developer agrees that the allowable aggregate distributions of profits from the project which shall be payable to the developer shall not exceed twenty percent (20%) of total allowable development costs of the project. For rental or apartment properties the developer agrees that the allowable aggregate distributions of profits from the project which shall be payable to the Developer shall not exceed ten percent (10%) of the imputed equity in the project as well as limitations on the distributions from capital sources and distributions from operations.

An audit includes the following:

1. Review of all documents related to the project to determine the Boards position.
These include the decision of the Board, regulatory agreement, monitoring agreement, deed rider as well as limited dividend corporation documents.

2. All revenue generated for the project which includes a review of the selling price of each unit
3. A review of all costs for the project including a breakdown of the site acquisition costs, hard costs and soft costs. Comparing and profiling these costs to industry standards.
4. Review of members of limited dividend corporation to determine if any members had a potential conflict of interest or may have received favorable terms and conditions.



“The Boxborough Case”

The Town of Boxborough is currently in litigation with a 40B developer, and alleges an elaborate scheme to defraud the town of \$2.8 million in profits. The developer formed a limited liability corporation, agreed to limit the corporation's profits to 20 percent of the Total Development Cost and to return any excess profits to the town, to create more affordable housing. The lawsuit alleges that the applicant hired their own companies (and companies in which their wives had interest) and then overpaid the companies for work on the project thus earning a 45 percent profit. The developer filed certified cost and income statements with the town's housing board that showed a 13 percent profit. The Boxborough Housing Board turned those document over to an outside auditing firm, which reported the developer actually made a 45.5 percent profit, by paying themselves more than originally proposed for the project.

This will be one of the first cases in the Commonwealth in which a developer maybe forced to turn profits back to a community. It raises some important lessons for all Zoning Boards of Appeals to focus on how to write a decision and monitor the construction of a 40B project.

To assist Zoning Board of Appeals understand the importance of this case, H&H Associates has prepared a summary of the case and would be pleased to discuss the facts with interested parties.

Topics will include:

- Boxborough Case— ***What happened and the lessons learned in Boxborough***
- Changing the playing field— ***Creating a win-win-win partnership between the developer, the subsidizing agency and the community***
- Structuring a Partnership—***Structuring a financial agreement that clearly and unequivocally defines the role of developer, subsidizing agency and community.***
- ***Definition of Profit***—Defining in clear terms the definition of “limited dividend corporation” and the formula for calculating excess “profit”.
- ***Role of monitoring Agent***—Defining the role of the monitoring agent including, who hires the monitoring agent, what information is to be provided and the method of compensating the monitoring agent.
- ***Upfront vs Back End Payments***—Communities have the option to wait until the project is completed to recover excess profits or they can negotiate with the developer to reduce and factor future profits to receive an upfront payment.

Comprehensive Permit Review Process

1. Prior to Receipt of Comprehensive Permit

- i. Review ZBA rules and regulations and update
- ii. Understand from CEO the concerns of the Town
- iii. Discuss review methodology
- iv. Identify Team Leader
- v. Designate voting members
- vi. Identify Organizational model
- vii. Identify working relationship with other Boards
- viii. Identify Peer Review Resources
 - Legal
 - Environmental
 - Traffic
 - Architectural
 - Financial

2. Conduct the Hearing to review the Application

- i. Check application for completeness.
- ii. Discussion of consultants.
- iii. Address escrow issues.
- iv. Obtain an overview of the proposed project.

a. Environmental Issues

- v. Presentation from applicant's consultant regarding environmental issues.
Response, if any, from Conservation Commission.
- vi. Presentation on environmental issues from Board's consultant.
- vii. Public input.

b. Site Control Issues

- i. Presentation from abutters on site control issues.
- ii. Rebuttal presentation from applicant, if desired by applicant.
- iii. Public Health Issues
- iv. Review public health and septic issues with the health officer.
- v. Receive information from applicant regarding waste- water treatment, water supply, and storm water management.
- vi. Receive information from Board's consultant on wastewater treatment, water supply, drainage, and storm water management and other public health issues.

- vii. Public input.

c. Public Safety Issues

- i. Applicant to address public safety issues, such as, traffic, road design, parking, emergency access, hydrants.
- ii. Obtain input from police and fire chief.
- iii. Receive information from Board's expert on public safety issues.
- iv. Public input.

d. Architectural Plans, Design, and Housing Issues

- i. Review architectural plans and design.
- ii. Review building design, including space between building's setbacks, landscaping, noise, amenities, and utilities.
- iii. Address any additional engineering issues.
- iv. Obtain input from Planning Board and other Board consultants, including the Facilitator.
- v. Review plans with Housing Authority.
- vi. Public input.

e. Economic Issues

- i. Applicant's presentation on pro forma.
- ii. Presentation to Board from Board's economic expert.
- iii. Public input.

f. Administrative Issues

- i. Deed riders, monitoring agreement, and lottery process.
- ii. Any other administrative issues.
- iii. Input from Facilitator.
- iv. Public input.

g. Address Outstanding Issues

- i. Discuss potential conditions and drafting of decision.
- ii. Applicant input.
- iii. Obtain final input from consultant to the Board and Facilitator.
- iv. Public input.

3. Document the Decision

- i. Prepare a draft before closing the hearing
- ii. Collect all input
- iii. Review and vote on all important points

Organizational Models for ZBAs Reviewing Comprehensive Permits

Summary:

When a Zoning Board of Appeals receives an application for a Comprehensive Permit, Board members need to become familiar with all aspects of the comprehensive permit as well as local and state zoning regulations. For a volunteer Board, can be a daunting task. An applicant for a comprehensive permit for a \$100 million project frequently confronts a part time board with a “team of experts” ready to answer all questions. A board is expected to respond to the issues associated with the project and to become familiar, if not proficient, in all aspects of the project including the complicated rules and regulations of the Massachusetts 40B statue.

Each 40B is unique and poses different challenges to different communities. In order to determine the best approach for a 40B, an inventory of the issues and the resources that are available is needed. This includes identifying the issues that will require a peer review as part of the analysis. After the issues and the resources have been identified, a time line is developed and dates set as to when specific topics will be reviewed by the ZBA. Laying this out on a schedule provides advance notice for everyone (applicant, experts, abutters, town boards and commissions and the Board) to be prepared to discuss the topic. Comprehensive Permits can take a year or more to review; a formal schedule outlining the key issues is valuable to all involved.

Selecting and organizing model to use to conduct a review of a comprehensive permit application will go a long way to ensuring the board reaches the best possible decision for the town and the applicant. This is more important for the larger comprehensive permits. Proposal that are under 25 units usually are straightforward. Proposals that are greater than 100 units may involve an investment by the applicant in excess of \$25 million could take more than a year to completely understand and to write a decision.

Comprehensive permits are usually resolved through compromises with the applicant. HAC encourages this behavior. Usually the party that has the best understanding of the comprehensive permit procedures, rule and regulations as well as an understanding of the project prevails.

Time is critical to both the ZBA and the developer. Usually a developer has funds tied up in the project before he submits the application. The developer is motivated to reach a quick conclusion to the process so they can start producing results. On the other hand, time is the enemy of the ZBA. Typically, after spending a year reviewing a difficult application, the board gets tired and wants to move on. Some times changes in the membership of the board make it difficult to proceed.

Many boards are comfortable reviewing the details of a project, but miss the strategic implications of the overall project. A board that stays focused on the strategic aspects of the program and how it will affect the community will reach the best solution.

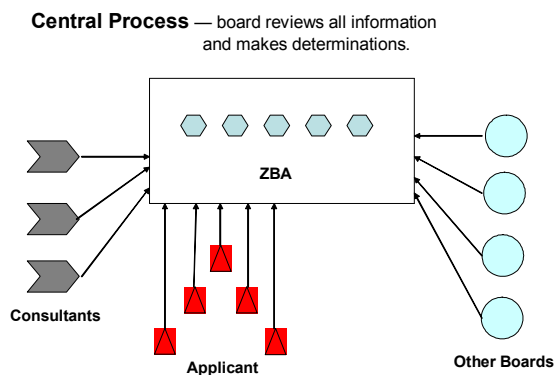
To streamline this process, Boards have adopted one of five different approaches to review Comprehensive Permits. The key to a successful review is to design a process that will allow the board to balance the cost of the review with amount of time they personally would like to spend reviewing the application against the amount of control they wish to exercise. In general, these different approaches represent different methods to interface to the applicant and coordinate resources within the Town.

Central Process —

The board reviews all information and makes determinations.

The diagram at the right is a pictorial of the process. In this case a process that is managed centrally. The pictorial illustrates the ZBA interfacing with three different groups. The first group is other Boards in Town and could include Board of Health, Planning Board, Conservation Commission, Building Inspector, etc. The Boards

generally do not make decisions on a comprehensive permit, but they frequently are consulted for their expertise and insight to the proposed project. The second groups are the consultants that they ZBA hire to perform a peer review of the information provided by the applicant. This could include traffic, wetlands, drainage, financial and legal. The third group is the applicant. This could be one person that coordinates the resources for the developer or it could be several individuals such as engineer, architect, financial, legal, etc. The key point is that in this process the ZBA hears all information and interfaces with all groups. This generally is not feasible for a large project as it is very time consulting and inefficient.



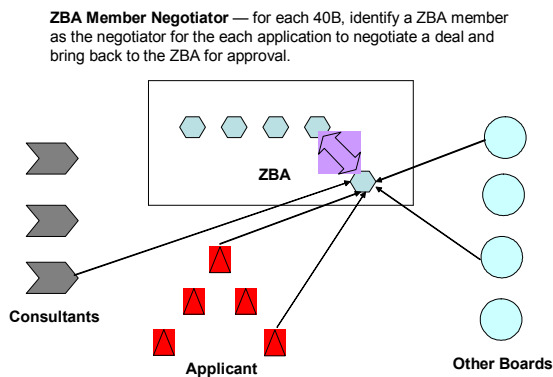
Most boards start out with this organization, because this is the way they operate on other cases that are brought before them. A meeting date is set, the board convenes a quorum, and for an hour or two, the board discusses the case. Frequently there are action items that require homework on the part of the board that maybe assigned to a board member to lean about the topic (traffic study, title 5, or DHCD regs, etc) and report at the next meeting.

The advantage of this approach is that all members have an opportunity to hear all information and participate in the discussion.

The disadvantage is that it can take an inordinate amount of time as all boards members need to be present for information to be delivered. Frequently issues that were brought up several months ago need to be repeated as members learn more about the project. The board deals with detail technical information that frequently is not an area where all board members have the expertise to participate.

ZBA Member Coordinator —

For each comprehensive permit, a ZBA member is selected to be the coordinator for the each application and is requested to negotiate a deal and propose a recommendation to the ZBA for approval. This approach, one or two members of the ZBA are chartered by the Board to put together a team of either external consultants or members of town government or the administration and to meet with the applicant and negotiate a settlement that the will be presented to the Board for their approval through a vote. In this approach, most teams do not have a quorum from any town board so that meetings can be less formal and do not need to be posted. All meetings must be open to the public and may take public comment if desired. Typically, the team will be made up with a team leader, legal counsel, and members of the planning board, conservation committee or board of health. Experts maybe hired and pulled in as needed.



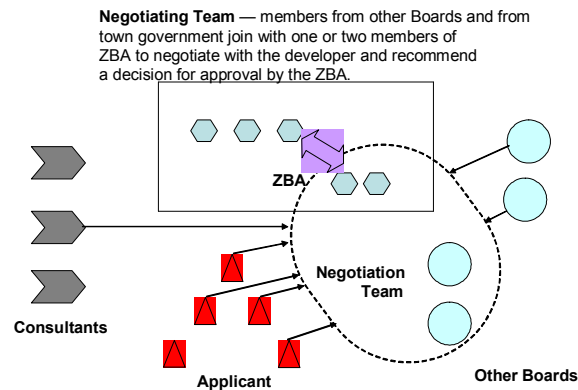
The advantages of this approach are that with a smaller team, they can meet at off hours in un-posted meetings, still in public, and have working session with the applicant where the key issues are evaluated. It has the potential to be faster than waiting for a meeting once every month. The team can get into details if they find it necessary. Most teams design a process that is fast and efficient. The fact that the team can be made up of other members

of the government means the recommendations of the team tend to be supported when brought to the full ZBA for formal approval and vote.

The disadvantage is that the ZBA sees only the recommendation of the team and the information they share with the ZBA. Sometimes this is good, but it does mean the full board does not have the benefit of hearing all the information. Although this requires less time of the members of the ZBA, it does require more time of the people on the team. The other disadvantage is that if the team is not staffed properly up front with the right people from the right departments, there may be others that object to the recommendation.

Negotiating Team —

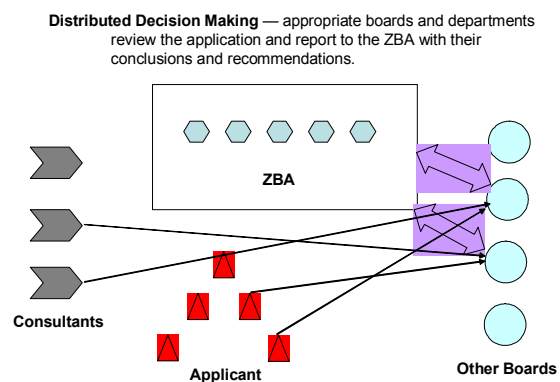
Members from other Boards and from town government join with one or two members of ZBA to negotiate with the developer and recommend a decision for approval by the ZBA. This approach has the advantage of pulling non-ZBA members into the process. Frequently this could be members from other Boards or staff from Town Government. This is particularly effective when the key issues in the project require a unique expertise that is not found on the ZBA. Typically, this is used for environmental or unique technical issues. It has been used when it is desirable to have a Selectman or other member of Town Government on the Committee.



Distributed Decision Making —

Appropriate boards and departments review the application and report to the ZBA with their conclusions and recommendations. This approach has been used effectively when a decision is complex and requires analysis by other groups or boards that are prepared to commit their conclusion to writing. It requires a formal process and a commitment by each of the parties to follow through with their assignment.

This approach is intended to leverage the experts that work on other boards or in other departments in town. Typically, the application is sent to a list of appropriate boards that are requested to review the application, meet with the applicant (sometime more than once) conduct peer reviews of the information and report to the ZBA. Usually this takes two to four months to schedule all the meetings. Typically, the respective Boards or departments update the ZBA



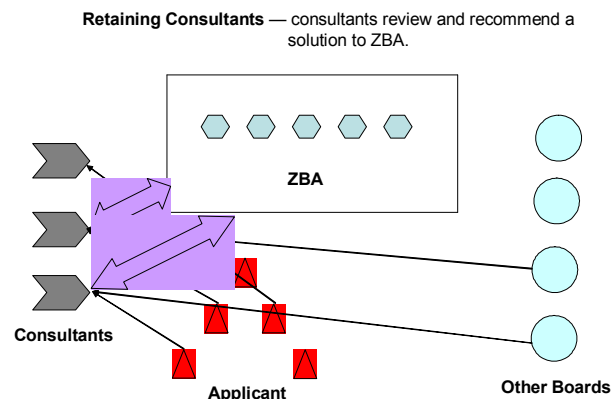
on their activity. Once the respective Board has completed this task, they present a formal report to the ZBA for their consideration.

The advantages of this approach is that it receives maximum buy in from the respective boards, departments and the community as a whole. This approach tends to be less expensive as most boards are familiar with their areas of concern and do not require experts. It is best used in a community where the local government has had experience working as a team and where the objective of the ZBA is to conduct a complete review vs. conducting a quick review.

The disadvantages are that it is difficult to coordinate issues that cross several Boards such as DEP policies that influence the Conservation Commission and the Board of Health. Different opinions and recommendations can be brought to the ZBA and require the ZBA to make a decision in favor of one Board over another. This process takes more time, in some cases over a year. For this reason, applicants generally do not favor it. In some cases, respective boards may not cooperate with the ZBA or worse.

Retaining Consultants —

Consultants review and recommend a solution to ZBA. This option is used when there is a consultant that the Board trusts and when there is no one in Town that can manage the process. It is particularly effective for large complicated projects. In this case the Board outlines in broad terms their goals and objectives, and requests the consultant to organize and present the material to the Board in a logical and coordinated fashion. The role of the consultant is not to make any decisions, but to provide the Board the information needed so that they can make an informed decision. Frequently this involves finding and retaining consultants to do peer reviews, defining statements of work for consultants in order to verify the information provided by the Applicant. The advantage of this approach is that it leaves the Board free to deal with the strategic issues important to the community as opposed to becoming immersed in the details of each of the phases of the project and the details of 40B.



Hiring consultants to review an application for a Board is probably the fastest way to review a permit. Typically, a team of people who specialize in comprehensive permits reviews the entire application in a month or two. Frequently this will include several meetings the applicant. The information is syntheses and a summary report is given to the board.

The advantages are it is the fastest way to review a comprehensive permit; it requires the least amount of time for the board and the applicant and tends to get to the key issues very quickly.

The disadvantage is that most of the learning that takes place in the processes is not passed on the board.

Conclusion:

As housing continues to be scarce in Massachusetts and as prices continue to rise, comprehensive permits are a fact as developers find ways to use land that was undevelopable in the past. A community that is concerned with the impact of a comprehensive permit will find that a structured approach that is based on one of the five options identified will enable the review of the permit that allows the appropriate resources to evaluate their area of expertise will ensure that ZBA has the information to reach the best decision for the community.

Comprehensive Permit Schedule of Hearings

H&H Associates LLP Comprehensive Permit Schedule of Hearings Project: XXXXXXXX at Town				
Date	Topic	Presenter	Peer Review	Notes
June 26	Review of Application for completeness and Exceptions Requested	Applicant	Applicant	
July XX	Environment		Conservation Commission	
August xx	Public Health		Board of Health	
September zz	Public Safety		Planning Board	
October kk	Architectural Plans and Design		Planning Board	
November dd	Economic Impact			
December xx	Abutters Concerns			
January xx				

Comprehensive Permit Organizer

H&H Associates LLP
Comprehensive Permit Organizer
Project: XXXXXXXX, Town

Potential Resources to review the 40B Application

[illegible]

Donation to Town													
Writing the decision													
Issues to be evaluated by ZBA	Priority (High Med Low)												
Public Health													
Wastewater Treatment													
Water supply													
DEP Approval/ Feedback													
Drainage													
Storm Water Management													
Chemical Pollutants													
Inspection and monitoring													
Public Safety													
Traffic													
Height of Buildings													
Road Design													
Parking													
Sidewalks													
Emergency													

Access													
Hazardous Material													
Sprinklers													
Hydrants													

Issues to be evaluated by ZBA	Priority (High Med Low)	ZBA	Board of Health	Con Com	Planning Board	DPW	Water and Sewer Dept	Building Inspector /Comm	Other Fire/ Police Chief	Housing Authority	Legal Counsel		Peer review Resources
Environment													
Wetlands Delineation													
Construction mitigation													
Storm water Management													
Open space													
Vernal Pools													
Wildlife													
Historic													
Architectural Plans and Design													
Building													
Space between													
Setback													
Landscaping													
Noise													
Density													
Amenities													
Utilities													

Issues to be evaluated by ZBA	Priority (High Med Low)	ZBA	Board of Health	Con Com	Plannin g Board	DPW	Water and Sewer Dept	Building Inspector /Comm	Other Fire/ Police Chief	Housing Authority	Legal Counsel		Peer review Resources
Economic Impact													
Financial													
Tax Implications													
Abutters Concerns													



October 15, 2004

Dennis McEvoy
89 Stonebridge Way
Groton, Mass 01450

Re: Oak Ridge Comprehensive Permit

Dear Mr. McEvoy:

I have conducted a financial review of the pro forma for the Oak Ridge Comprehensive Permit Application. The goal of my review was to determine, based on foreseeable cost and conditions imposed by the ZBA, if the project under consideration will remain “economic” per Massachusetts General Laws Chapter 40B, §§ 20-23., 760 CMR 30.01 – 14, 760 CMR 31. 01 – 10 and the Guidelines for Model Local Rules from DHCD.

Summary of Findings:

In my opinion, Oak Ridge, as approved by MassHousing under MGL 40B for a comprehensive permit under the Housing Starts Program, as 44 townhouse condominiums is economically viable at a density of 24 units, 6 of which will be sold as affordable units.

The attached background information provides further clarification and may be adjusted if new information is received. I look forward to discussing this with the Board of Appeals if appropriate.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Heaton", written over a horizontal line.

Richard Heaton
Partner

178 Ballville Road, Bolton, MA 01740 • Phone 978-779-2892 • FAX 978-779-9835

Report on Villages at Oak Ridge of Groton, LLC.
Prepared for Groton Zoning Board of Appeals
By
H&H Associates LLP

Summary:

The Mattbob Inc. filed a Comprehensive Permit Application under Chapter 40B to build a 44 unit condominium development in Groton, Massachusetts. The project site contains a total area of about 27.8 Acres. About three acres are in Littleton.

Financial Review of a Comprehensive Permit Pro forma:

GL 40B s.20-23 is a subsidized program designed to stimulate building of affordable housing in Massachusetts by streamlining the process for gaining approval to build affordable housing.

The Applicant agrees that in exchange for the right to build a project under the comprehensive permit statute, G.L. c. 40B, ss. 20 – 23 the developer shall be a limited dividend corporation and shall return excess profits to the community for use in building more affordable housing.

Developments started under GL 40B, s.20-23 provide a benefit to the developer, the subsidizing agency and the community. They benefit the developer by providing financial reward for the risks taken and effort spend. They benefit the subsidizing agency by providing a return on invested funds. They benefit the community by providing long-term affordable housing to residents.

The most successful developments occur when all parties to the development (Subsidizing Agency, Developer and the Municipality) understand their respective roles and responsibilities. While the financial implications of all projects are different, common to each is the presumption that each party is able to achieve their respective beneficial interests. Therefore, to develop a successful project, it is critical that all parties structure a financial agreement that clearly and plainly defines the role of each party. To that end, the key documents are the comprehensive permit decision and the regulatory/monitoring agreement.

When reviewing a Comprehensive Permit, the Board of Appeals has broad authority to impose conditions on the project as long as the conditions do not render the project uneconomic. The burden of proving the conditions “uneconomic” rests with the applicant. At issue, for the Board of Appeals, is to determine whether the conditions imposed on a comprehensive permit will render the project “uneconomic” and subject to reversal by the Housing Appeals Committee. It is also important for the Board to understand the implications of the limited dividend requirements imposed by 40B and the rights of the community in recovering excess profits.

Overview of the Financial Analysis

In reviewing the pro forma, three scenarios were examined.

- The Base Pro Forma which was adjusted by Mr. Jacobs on August 31, 2004, shows total revenue of \$12.9 million and a profit of \$2.2 million or 20.7% of total development costs. In this scenario since profits exceed 20% of the total development costs, \$67K would be returned to the Town for use in building affordable housing.
- Scenario #1 reduces the density from 44 to 24 units and increases the selling prices of affordable units and market rate that may be expected after the construction and permitting period. It assumes that the real estate market continues to grow in 2005/2006 at 3% per year. Under this scenario, the project is expected to produce revenue of \$8.5 and a profit of \$1.2 million or 16.3% of total development costs.
- Scenario #2 reduces the density from 44 to 20 units, assumes the project will be sold in 2005/2006 and that real-estate prices increase at 3% per year. Under this scenario, revenue is expected to be \$7.0 million and profits will be 9.7% of total development cost or \$6 million.

Scenario #1 at 24 units is considered economic.

A summary is shown below:

Oak Ridge					15-Oct-04	
Input to Model:		Adjusted Proforma	Scenario # 1		Scenario # 2	
		31-Aug-04	15-Oct-04		15-Oct-04	
						Benchmark
Affordable Rate Units (2BR, 2BA)	11	\$ 149,500	6	\$153,250	5	\$153,250
Market Rate Units --\$ per Sq Ft (GLA)	33	\$ 189.31	18	\$233	15	\$233
Total	44		24		20	
Value of Land		\$723,000		\$723,000		\$800,000
Market Rate upside (%)				0%		0%
Construction Cost/ sq ft		\$88		\$95		\$95
Output from Model:		Adjusted Proforma	Scenario # 1		Scenario # 2	
		31-Aug-04	15-Oct-04		15-Oct-04	
						Benchmark
Average Market Rate Home		\$ 340,000		\$ 418,468		\$ 418,468
Total Revenue		\$12,864,500		\$8,451,924		\$7,043,270
Land Acquisition		\$723,000		\$723,000		\$723,000
Hard Costs		\$8,430,450		\$5,538,183		\$4,842,128
Soft Costs		\$1,508,152		\$1,005,663		\$854,765
Total Cost of Development		\$10,661,602		\$7,266,846		\$6,419,892
Net Profit		\$2,202,898		\$1,185,078		\$623,378
PBT (% of Total Develop Cost)		20.7%		16.3%		9.7%

Benchmark for definition of "uneconomic"

a) Profit Margins in the Building Industry:

- (1) The National Association of Homes, a federation with 205,000 members has surveyed its members and found all builders in the survey have an average profit margin (Net Income before Tax) of 6.8% of total development costs. Small Volume Builders that build fewer than 25 homes per year, have a profit margin that averages 5.3% of total development costs.
- (2) An analysis over five years of 23 public companies providing housing and ranging in size from \$11 million to over \$7 billion in sales per year, shows the average profit before tax as a percentage of sales ranged from 4.9% to 8.7% of total development cost. The average for these 23 companies over five years was 7.6% of total development cost.

b) MassHousing Profit Margins:

- i) MassHousing has testified at the HAC hearing the average profit for Proposal before MassHousing was between 10% to 20% of Total Development Cost
- ii) MassHousing has approved projects at profit margins of 9% to 13% of Total Development Costs.

40Bs Approved by MassHousing		
	Units	Profit
Cohasset park, Foxborough	14	9%
Rosegate, Westford	12	11%
Delano's Farm, Duxbury	51	10%
Talbot Village, Mendon	60	14%
Crystal Lake Village, Palmer	44	9%
Franklin Place	32	13%

Source: MassHousing

c) Benchmark for Oak Ridge Estates:

In the pro forma filed by the Applicant pointed out that a profit of 16.4% of total development costs was acceptable. Based on industry data and approvals granted by MassHousing, a profit of 16.4% is above average for the building industry. In my opinion, a profit of 12% of total development cost is as a minimum benchmark to determine if the project is economic. A project with a return over 12% is considered "economic" whereas a project with a profit of less than 12% is considered "uneconomic".

Review of the Pro forma

a) Land Value

Per the conditions of the site approval letter from the MassHousing, Housing Starts Program, the maximum permissible acquisition value which can be included in the Development Budget for a Housing Starts Construction Loan application will be limited to the lesser of: the "as is" appraised market value of the land and improvements,

Or,

the purchase price of the land and improvements in the last arm's length transaction, if any, within the last three years, plus (i) reasonable and verifiable costs of property improvements made subsequent to acquisition and/or (ii) reasonable and verifiable carrying costs related to the land and improvements, such as interest, taxes and insurance.

The property was acquired as two parcels: a 25.8 acre parcel in Groton and Littleton for \$373K and a single family home for \$122K in April of 2002. After acquisition of the two parcels a portion of the property was sold at an undetermined price and a third .81 acres was bought for \$350K in April of 2004. The overall price for the land has been calculated by the Applicant at \$723K.

An appraisal has not been done on the property. I suggest the Board retain an independent appraisal of the property to determine which is lower, the last arms length transaction or the "as is" appraised value.

Further in my opinion, the arms length transaction described by MassHousing should be based on the sum of all the arms lengths transactions plus carrying costs and improvements that have occurred in the last three years for the property in Groton.

For purposes of my analysis, I have accepted the Applicants conclusion that the value is \$723K, but I do not consider the evaluation complete until the issue of jurisdiction of the Littleton land has been clarified and valued by a certified appraiser.

b) Jurisdiction

A portion of the property included in this request for a comprehensive permit is in Littleton. In my experience when this occurs, the Applicant either applies for a comprehensive permit in both communities or they exclude the property that is not within one community from the comprehensive permit request. In this case the Applicant appears to have included property in Littleton that is critical to the project, but has not applied for a comprehensive permit in Littleton. It also appears without the Littleton property included the project may not be buildable.

In addition, in determining the "as is price" of the land, an appraiser will determine the number of lots that can be built with no change in zoning. Typically the test is to determine, based on the lot size and frontage, if an ANR (Approval Not Required) building permit may be obtained from the planning board. Given the land and frontage in Littleton and Groton it is not clear how many ANR lots would be approved by the Groton Planning Board. For this reason it is difficult to determine an accurate "as is" appraisal of the property.

This is an important issue for the Board to completely understand before they render a decision as it is grounds for an appeal.

I suggest the Board request Town Counsel determine if this comprehensive permit applies to property in both Littleton and Groton and to determine if the Groton ZBA has the jurisdiction to approve a comprehensive permit in Littleton. If the Groton ZBA does not have jurisdiction, then I believe a comprehensive permit should be applied for to the Town of Littleton or the Littleton property should be excluded from this comprehensive permit application.

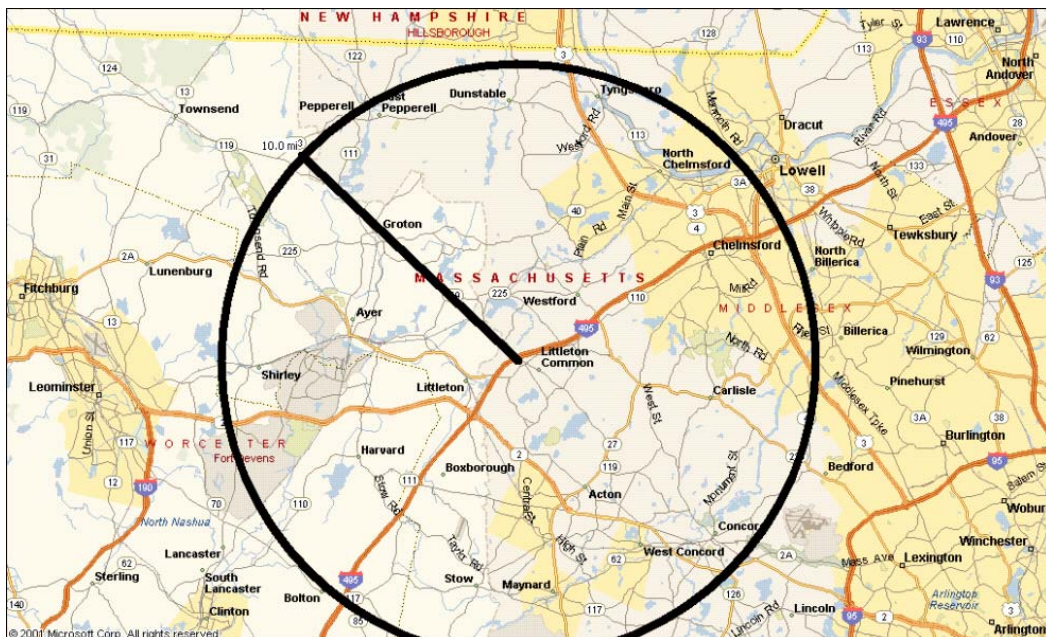
Resolving this question will determine the value of the land in Groton. If the value of the land in Groton is decreased by \$200K from \$723K to \$523K it will result in a further reduction of four units (24 units to 20 units) as the “economic” point of the project.

c) Pricing for Market Rate Condominiums

i) Current Housing Market in Groton

Groton is a desirable community with much to offer. It has not had an active condominium

market in the past so there are few local



comparables. However, comparable properties can be found near to Groton. An analysis of the market should include communities that have condominiums within a reasonable distance from Route 495.

Drawing a circle with a ten mile radius of the intersection of Route 119 and Route 495 displays the Towns of Chelmsford, Acton, Westford, Harvard and Bolton as close enough to the project that they should be used to calculate competitive prices.

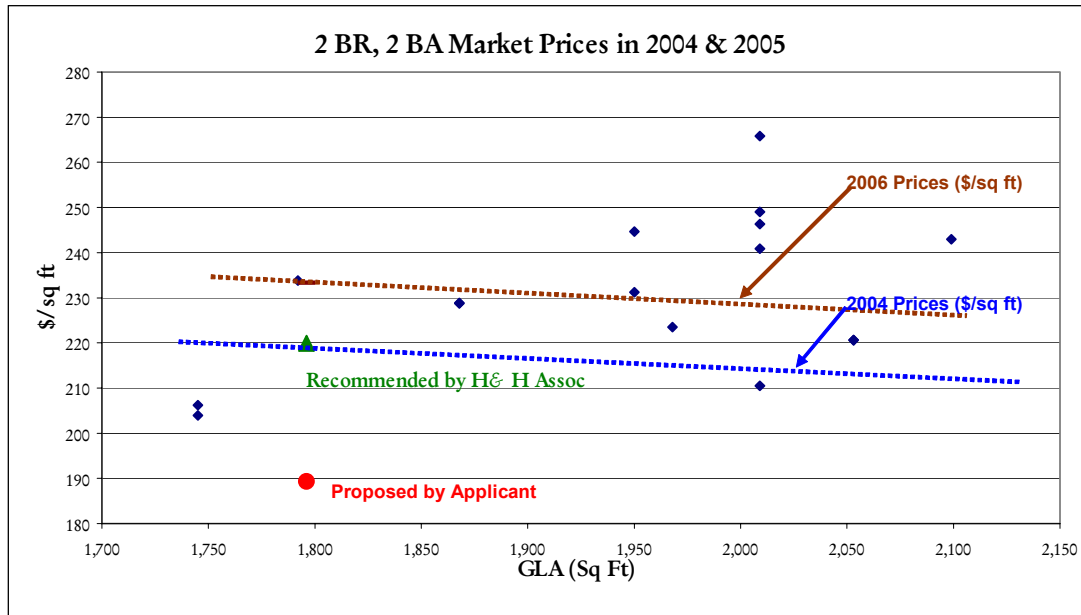
In my opinion evaluation of comparable properties should only be considered if the properties that are no more than three years old. New construction for a first time home buyer is able to command a premium price. The Applicant has compared properties that are ten or twenty years old in their complete evaluation. This distorts the analysis with lower priced properties.

In addition it is important to reflect in the pro forma the selling price of the project when it is put on the market. This is expected to be in late 2005 or 2006. Therefore an inflation factor of 3% per year was added to the selling price of the project. Considering the condominium prices in Massachusetts have been increasing at a rate of 14% per year in 2004, this is a conservative estimate for inflation.

With this in mind, listed in Addendum E, are new properties less than three years old that have been sold for the first or second time within the last three years. Properties were examined and plotted on a graph to show the relative selling price per square foot. These properties range in size from 1700 square feet to 2150 square feet and range in price from \$200 per sq ft to \$260 per sq ft.

The Applicant proposes to sell a 1796 sq ft condominium for \$340K or \$189/sq ft.

A comparison to other projects in the area suggest that these prices are inconsistent and prices of new condominiums in the Groton area. Two Bedroom condos should be selling for \$220 per square foot in 2004 or \$395K for a 1800 sq ft unit. The same unit will sell new for \$420K in 2006 at \$233 per square foot.



Proposed by Applicant		1-Jun-04	1-Aug-04		
Mkt Rate-Unit A or B (2 bedroom)	Groton	\$340,000	\$ 340,000	1,796	\$ 189.31

Recommended by H&H Associates			1-Oct-04		
Market Rate Unit	Groton		\$395,000	1,796	\$ 219.93

Future Housing Prices in Groton, Recommended by H&H Associates					
	2004	Inflation	2005	Inflation	2006
Selling Price	\$ 395,000	3%	\$ 406,850	3%	\$ 419,056
Price/ Sq Ft	\$ 219.93		\$ 226.53		\$ 233.33

This analysis of selling prices is critical to evaluate this project by the Board of Appeals. I suggest the Board retain a certified appraiser selected by the Board to provide an objective valuation of the project.

2) Calculating prices of affordable unit selling prices

- a) The pro forma filed estimates the price of an affordable unit at \$149.5. This price is based on 30% of 70% of the monthly income for Lowell AMI and is based on the AMIs for 2004 for a two-bedroom, three person household.
- b) Based on the assumptions and calculations shown in Addendum D, the affordable three bedroom units at \$153K (30% of 70% of the 2005 Lowell AMI) per MHFA guideline for a three-person household. This assumes interest rate of 6.25% based on mortgage rate of 5.74% in October of 2004, local tax rate of \$15.44, mortgage insurance of .78% per year, homeowners insurance at .3% per year and condominium fees of \$66 per month. The AMI

for Lowell is assumed to increase 3% from 2004 to 2005 and is consistent with the rate of inflation. Details are in Addendum D.

3) Construction Costs

The most significant item in the pro forma is construction costs. This represents about 60% of the total development costs. In July of 2003 the Applicant estimated the construction costs were \$87.70 per square foot. For purposes of this review, to provide for inflation, total development costs were calculated with construction costs of \$95 per square foot.



H & H Associates LLP

November 3, 2004

Dennis McEvoy
89 Stonebridge Way
Groton, Mass 01450

Re: Oak Ridge Comprehensive Permit Exceptions

Dear Mr. McEvoy:

I have conducted a financial review of the list of exceptions filed with the Groton ZBA for the Oak Ridge Comprehensive Permit.

As part of the review of a comprehensive permit, an applicant may request exceptions from local bylaws, rules and regulations. According to 760CMR31.02 (2) h; a list of requested exceptions to local requirements and regulations, including local codes, ordinances, bylaws or regulations may be submitted to the ZBA.

It is my experience working with ZBA's throughout the Commonwealth that it is in the best interest of the Town, to rely on the expertise of the Planning Board, Board of Health and Conservation Commission as well as the Fire Department, Police Department and DPW to review the requested exceptions. They in turn provide a recommendation to the ZBA on each specific waiver so they can make the best decision for the Town as a whole. The test the ZBA will apply is to determine the impact of not granting the request will have on the project. If denial of the request would cause the project to become uneconomic, the Board will most likely approve that request. If however, denying the request does not make the project uneconomic, the Board has latitude to grant or deny the request as it judges suitable. In the event of an appeal of the Board's decision to the HAC the burden of proving the denial of a requested waiver made the project uneconomic rests with the Applicant, so the Board is well-advised to go through each request with the respective Board or Commission and the Applicant ahead of time and decide if the financial impact of each item on the project. It would be unreasonable for the board to grant or to deny an exception on the project without knowing the impact on profitability.

These comments are in addition to the financial review conducted by H&H Associates dated October 14, 2004 a copy of which is attached. In that report, I concluded that in my opinion, Oak Ridge, is economically viable at a density of 24 units.

This report is based on reviewing the list of specific waivers that were filed to the Board in an undated and unsigned report on October 18, 2004.

Reviewing the requested exceptions on earth removal, it appears the Applicant may want to remove fill from the site for sale either within Groton or outside the Town borders. This is a source of income that has not been considered in my financial review of October 14, 2004 that could have a significant impact on the financial impact of the project. I would encourage the ZBA and the Earth Removal Committee to examine this in detail.

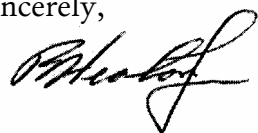
As part of the review of the comprehensive permit, the Board may act to approve or deny each requested exception independently. The list of exceptions breaks down into four categories:

1. Exceptions critical to the project— The project cannot be built without approval of this exception. An example of this exception is multifamily housing on a single lot. If the Board's goal is to approve or partially approve a project, critical exceptions are usually approved.
2. Blanket exceptions— This exceptions do not specifically refer to a local bylaw rules or regulation, but refers to all bylaws or rules and regulations of a general nature. An example is "request an exception to all local wetland bylaws". These blanket exceptions should be denied as the economic impact on the Town cannot be determined and the exposure is undefined.
3. Public health or public safety or environmental exception— Granting this exception will cause a major public safety, public health or major environmental impact. An example would be emergency access to a site as determined by public safety officials.
4. Optional Exceptions— The financial impact of not granting optional exceptions should be identified and the Board should decide if the exception is important to the project and the community and if denying the requested exception will make the project uneconomic. If denial of the exception would make the project uneconomic, steps should be taken to offset the increased cost of not granting the exception. An example is a requested exception to installing granite curbs as defined by local bylaws. Denying this exception might be offset by adding several units to the project over the minimum economic density.

The conclusions in this report are based on analyzing the information provided and by projecting what might reasonably be expected to occur in the opinion of the author. Every effort has been made to verify information to be reliable, however no liability is assumed because mistaken information. The above conclusions are based on several factors that should be reviewed in more detail with the Board and the Applicant to decide if new information may change the conclusions presented in this report.

Attached is the list of waivers and recommended disposition.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Heaton', with a stylized, cursive script.

Richard Heaton
Partner

Recommended Disposition of Exceptions Requested for Oak Ridge

(Refer to Waiver Requests received October 18, 2004)

	Exception to Bylaw, rule or regulation		Cost or Type of Exception	Recommended Disposition
No	Section	Description		
I. Groton Zoning Bylaw				
1	Section 218-5 Section 218-11 Section 218-12 Section 218-13 Section 218-18 Section 218-20 Section 218-22	Prohibited uses Basic Regulations Intention of Districts Schedule of uses Basic Requirements Intensity Regulations General Provisions	Critical to Project	Approve
2	Section 218-14	Special Use – multiple dwellings on a single lot	Critical to Project	Approve
3	Section 218-23	Off Street Parking and single access	No Cost	Deny if verified by public safety officials as it may create public safety problem
4	Section 218-23	Appearance	Applicant to verify cost of \$2/sq ft or \$160K	Optional based on financial impact
5	Section 218-25	Site Plan Review	\$20K	Deny, Planning Board to hold site plan review and recommend disposition to the Board
6	Multifamily	Allow for multifamily	Critical to Project	Approve
7	Section 218-28	Development Rate Limitation permit	Applicant to verify Cost of \$50K	Approve, but Board may wish to impose conditions on rate of development
8	None	Grant relief from	Blanket Exception	

		any other zoning requirement		Deny
9	None	Grant relief from any other Groton Wetland bylaw	Blanket Exception	Deny

II. Groton Sewage Disposal Regulations				
1	Section 1.A	Exception to min requirement of 5 ft pervious material vs 4 ft required by Title 5	Applicant to verify Cost of \$20/CY, \$50K	Optional based on financial impact
2	Section 1.C. 5	Design Requirements, area between trenches not used for future expansion	No Cost	Deny, Not required if septic requirements are reduced through lower density
3	Section 1. E. 3	Distance Requirement-10 ft between primary and expansion requirement	No Cost	Deny, Not required if septic requirements are reduced through lower density
4	Section 1. E. 7	Min of 20 ft from property line and leach area, reduce to 10 ft	No Cost	Deny, Not required if septic requirements are reduced through lower density
5	Section 1E. 9	Min of 15 ft from edge of soil absorption and slope, install retaining wall as per title 5	No Cost	Deny, Not required if septic requirements are reduced through lower density
6	Section 1F.1	Square Footage, leach beds 150% of title 5	Applicant to verify Cost of \$50K	Deny
7	Section 1.H	Review of Plans	Applicant to verify Cost of \$5K	Deny
8	None	Grant review from any other regulations	Blanket Exception	Deny
III. Groton Earth Removal Bylaw				
1	Section 134-1	Permit from BoS	Critical to Project	Approve, however ZBA or BoS to hold public hearing and

				stand in for BoS
2	Section 134-4	Public hearing	Critical to project	Approve, however ZBA or BoS to hold public hearing and stand in for BoS
3	Section 134-5	2 year limitation of earth removal	No cost	Deny, if more than two years is required, re-file application with ZBA and request extension
4	Section 134-9	Surety Bond	Applicant to verify Cost of \$10K	Deny
5	Section 134-9.1	Permit subject to Town Meeting Approval	No Cost	Deny, Submit to Town Meeting for approval, vote will be non binding, but provide guidance to ZBA
6	Section 134-12	Earth Removal Advisory Committee	No Cost	Committee to evaluate and present report to ZBA
7	Section 239-5	BoS approval required	No cost	BoS to evaluate proposal and provide report to ZBA
8	Section 239-6	Review of Application	No cost	BoS to evaluate proposal and provide report to ZBA
9	Section 239-8.B Section 239-8.C.1 Section 239-8.C.4 Section 239-8.C. 6 Section 239-8.C. 8 Section 239-8.C.12	Waiver of Fees	\$.15/cuyd, Applicant to verify Cost of \$10K	Deny
10	Section 239-10	Surety Bond	Applicant to verify Cost of	Deny

			\$10K	
11	Section 239-12	Certificate of exemption and fees	Applicant to verify Cost of \$5K	Deny
12	None	Grant review from any other regulations	Blanket Exception	Deny
IV. Groton Wetland Protection Bylaw (Refer to Conservation Commission memo)				
1	Section 215.2	Jurisdiction of Conservation Commission	Critical to Project	Approve, however, Town Counsel should determine if the 40B process includes jurisdiction over the ConCom

2	Section 215.4	Need to file application with ConCom	No cost	Deny, Applicant should file application with ConCom who will provide opinion to ZBA for final decision
3	Section 215.6	Notice of Hearing	No cost	Deny, Applicant should file application with ConCom who will provide opinion to ZBA for final decision
4	Section 215.7	Presumptions 100 ft and 50 feet of wetland	No Cost	Deny, Not required if units are reduced through lower density
5	Section 215.10	Unrestricted inspections	No Cost	Deny, Not required if units are reduced through lower density
6	Section 215.11A and B	Enforcement and unrestricted right of entry	No Cost	Deny
7	None	Grant relief from all Groton Wetland Protection Bylaws	Blanket Exception	Deny
V Groton Sediment and Erosion Control Bylaw				
1	None	Grant Relief from any provisions of Groton Sediment and Erosion Control bylaw	Blanket Exception	Deny

VI Groton Building/Connection Fees

1	None	Waver to all fees	Blanket Exception	Deny

Summary of Costs Incurred if Requested Exceptions are Denied:

	Total Cost	Impact on Pro forma
Total Cost Estimate	\$275,000	24 units is economic (see below)

Oak Ridge					31-Oct-04	
Input to Model:	Adjusted Proforma	Scenario # 1	Scenario # 2		Benchmark	
	31-Aug-04	31-Oct-04	31-Oct-04			
Affordable Rate Units (2BR, 2BA)	11 \$ 149,500	6 \$153,250 25%	6 \$153,250 25%		\$ 153,250	
Market Rate Units --\$ per Sq Ft (GLA)	33 \$ 189.31	18 \$233	18 \$233		\$ 233.33	
Total	44	24	24			
Value of Land	\$723,000	\$723,000	\$723,000		\$800,000	
Market Rate upside (%)		0%	0%		0%	
Construction Cost/ sq ft	\$88	\$95	\$95		\$95	
Cost of Exceptions Requested		\$0	\$275,000		\$275,000	
Output from Model:	Adjusted Proforma	Scenario # 1	Scenario # 2		Benchmark	
	31-Aug-04	31-Oct-04	31-Oct-04			
Average Market Rate Home	\$ 340,000	\$ 418,468	\$ 418,468			
Total Revenue	\$12,864,500	\$8,451,924	\$8,451,924			
Land Acquisition	\$723,000	\$723,000	\$723,000			
Hard Costs	\$8,430,450	\$5,538,183	\$5,538,183			
Soft Costs	\$1,508,152	\$1,005,663	\$1,280,663			
Total Cost of Development	\$10,661,602	\$7,266,846	\$7,541,846			
Net Profit	\$2,202,898	\$1,185,078	\$910,078			
PBT (% of Total Develop Cost)	20.7%	16.3%	12.1%		12.0%	

Attachment A

Summary of Three Scenarios

Oak Ridge					15-Oct-04				
Input to Model:		Adjusted Proforma		Scenario # 1		Scenario # 2		Benchmark	
		31-Aug-04		15-Oct-04		15-Oct-04			
Affordable Rate Units (2BR, 2BA)	11	\$ 149,500	6	\$153,250	25%	5	\$153,250	25%	\$ 153,250
Market Rate Units --\$ per Sq Ft (GLA)	33	\$ 189.31	18	\$233		15	\$233		\$ 233.33
Total	44		24			20			
Value of Land		\$723,000		\$723,000		\$723,000			\$800,000
Market Rate upside (%)				0%		0%			0%
Construction Cost/ sq ft		\$88		\$95		\$95			\$95
Output from Model:		Adjusted Proforma		Scenario # 1		Scenario # 2		Benchmark	
		31-Aug-04		15-Oct-04		15-Oct-04			
Average Market Rate Home		\$ 340,000		\$ 418,468		\$ 418,468			
Total Revenue		\$12,864,500		\$8,451,924		\$7,043,270			
Land Acquisition		\$723,000		\$723,000		\$723,000			
Hard Costs		\$8,430,450		\$5,538,183		\$4,842,128			
Soft Costs		\$1,508,152		\$1,005,663		\$854,765			
Total Cost of Development		\$10,661,602		\$7,266,846		\$6,419,892			
Net Profit		\$2,202,898		\$1,185,078		\$623,378			
PBT (% of Total Develop Cost)		20.7%		16.3%		9.7%			

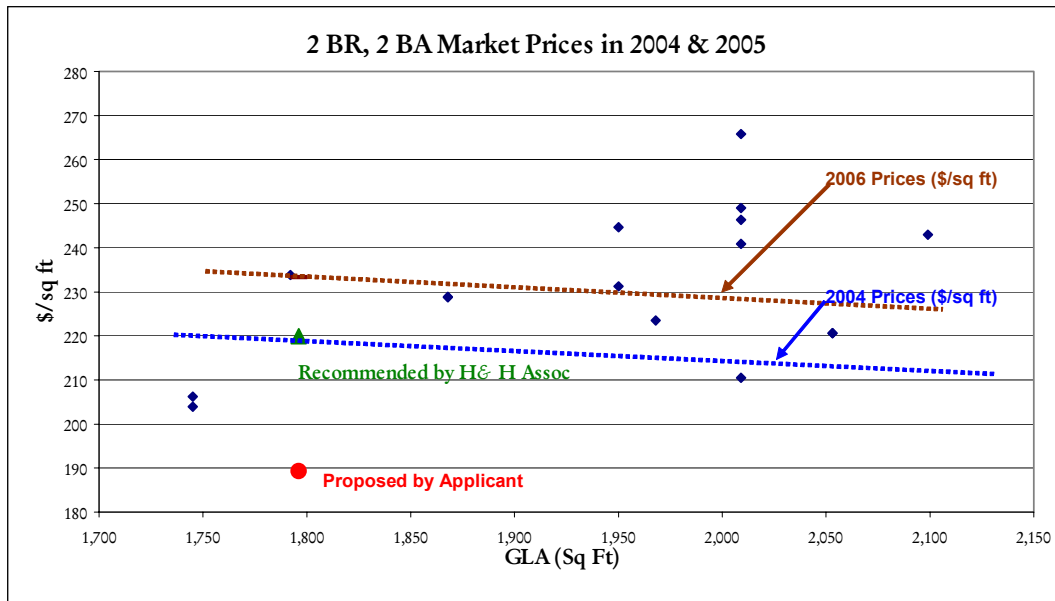
Attachment B Detail Pro forma

Oak Ridge		15-Oct-04	
	Adjusted Pro forma 31-Aug-04	Scenario # 1 15-Oct-04	Scenario # 2 15-Oct-04
Affordable Home	\$ 1,644,500	\$ 919,500 6	\$ 766,250 5
Market Rate Home	\$ 11,220,000	\$ 7,532,424 18	\$ 6,277,020 15
Other Unidentified--Error	\$ -	\$ -	\$ -
Total Income from Development	\$ 12,864,500	\$ 8,451,924 24	\$ 7,043,270 20
Development Costs			
ACQUISITION COSTS	\$ 723,000	\$ 723,000	\$ 723,000
CONSTRUCTION COSTS			
BUILDING Market Rate Units	\$ 6,732,000	\$ 3,977,460	\$ 3,314,550
LANDSCAPING	\$ 250,000	\$ 250,000	\$ 250,000
CONTINGENCY	\$ 401,450	\$ 263,723	\$ 230,578
Total Hard Costs	\$ 8,430,450	\$ 5,538,183	\$ 4,842,128
Site Soft Costs			
PERMITS AND FEES	\$ 218,905	\$ 137,313	\$ 114,428
ARCHITECTURE & ENGINEERING	\$ 125,000	\$ 78,409	\$ 65,341
LEGAL	\$ 50,000	\$ 50,000	\$ 50,000
BUILDER'S RISK INSURANCE	\$ 24,087	\$ 15,109	\$ 12,591
PROPERTY TAXES	\$ 30,000	\$ 30,000	\$ 30,000
ACCOUNTING/COST CERTIFICATION	\$ 15,000	\$ 15,000	\$ 15,000
MARKETING	\$ 521,400	\$ 348,154	\$ 290,128
DEED STAMPS	\$ 58,662	\$ 36,797	\$ 30,664
FINANCING FEES/LOAN COSTS	\$ 28,850	\$ 18,097	\$ 15,081
Construction Super	\$ 150,000	\$ 94,091	\$ 78,409
Utilities Vacancy Reserve	\$ 22,000	\$ 13,800	\$ 11,500
CONSTRUCTION LOAN INTEREST	\$ 100,000	\$ 62,727	\$ 52,273
SOFT COST CONTINGENCY	\$ 75,748	\$ 50,652	\$ 43,089
Total Soft Cost	\$ 1,508,152	\$ 1,005,663	\$ 854,765
Total Development Costs	\$ 10,661,602	\$ 7,266,846	\$ 6,419,892
Net Profit	\$ 2,202,898	\$ 1,185,078	\$ 623,378
PBT as % of Total Development Cost	21%	16%	10%

Attachment D Affordable Unit Prices

Maximum Price of Affordable Units:					
	Town of	Groton	Groton	Groton	Groton
	AMI for	Lowell	Lowell	Lowell	Lowell
	Bedrooms	2	2	2	2
	Guidelines (MHFA or Chapa)	MHFA	MHFA	MHFA	MHFA
	No of People	3	3	3	3
	% of AMI	70%	80%	70%	80%
	Max Affordable Selling Price	\$153,250	\$157,500	\$157,750	\$162,250
	Year of Sale	2005	2005	2006	2006
Supporting Calculation					
	2004				
	2005 Inflation				
Lowell	AMI for 2004	\$80,000	\$80,000	\$80,000	\$80,000
	Inflation Rate	3%	3%	6%	6%
	AMI for 2005	\$82,400	\$82,400	\$84,800	\$84,800
	% yr income Multiplier	63%	65%	63%	65%
	%of AMI from MassHousing Chart 1/30/2004	\$51,912	\$53,303	\$53,424	\$54,855
	Monthly Inc	\$4,326	\$4,442	\$4,452	\$4,571
	30% of Monthly Income	\$1,298	\$1,333	\$1,336	\$1,371
	Maximum Allowable Payments per Month	\$1,298	\$1,333	\$1,336	\$1,371
	Max Affordable Selling Price				
	Affordable Unit Price in 2004	\$153,250	\$157,500	\$157,750	\$162,250
	Down Payment	\$7,663	\$7,875	\$7,888	\$8,113
	Monthly Costs to occupant				
	Mortgage Amount	\$145,588	\$149,625	\$149,863	\$154,138
	Mortgage Term	30			
	Interest Rate (Oct 14, 5.74%+plus 1/4%)*	6.250%			
	P&I	\$896	\$921	\$923	\$949
	RE Taxes**	\$15.44	\$197	\$203	\$209
	Mortgage Insurance (.078%/12)***	0.78%	\$100	\$102	\$105
	Home owners Insurance (.3%)	0.003	\$38	\$39	\$41
	Association Fee for Market Rate	\$0			
	Affordable Association Fee Prorated	\$66	\$66	\$66	\$66
	Total Monthly Costs	\$1,298	\$1,332	\$1,334	\$1,370
	Difference to Max Allowable Payments / month	\$0	\$1	\$2	\$2

Comparative Real Estate Properties



Comparative Market Prices in 2004

Price Recommended by H&H Associates for 2004

Price Proposed by Applicant

Comparative Market Prices						
Address	Town	List	Sales	Sq Ft	Yr Blt	2004 \$/sq ft
31 Sandstone U:0	Westford, 16,2,2	\$439,835	\$500,212	2,009	3	16-Aug-04 \$248.99
13 STONE RIDGE U:0	Westford, 16,2,2	\$439,900	\$439,900	1,968	-	18-May-04 \$223.53
6 Rockwell U:0	Westford, 16,2,2	\$446,890	\$509,900	2,099	1	28-Jul-04 \$242.93
5 STONE RIDGE U:0	Westford, 16,2,2	\$454,485	\$483,893	2,009	3	15-Jul-04 \$240.86
8 Highland Road U:8	Westford, 16,2,2	\$459,900	\$453,000	2,053	2	1-Sep-04 \$220.65
14 SANDSTONE U:0	Westford, 16,2,2	\$462,172	\$422,796	2,009		\$210.45
27 MEYER HILL DRIVE U:34	Acton, MA 6,2,2	\$469,000	\$451,000	1,950		\$231.28
30 Meyer Hill Drive U:30	Acton, MA 6,2,2	\$488,000	\$477,000	1,950	2	16-Jul-04 \$244.62
3 STONE RIDGE U:0	Westford, 16,2,2	\$533,893	\$533,893	2,009		\$265.75
19 Sandstone	Westford 6,2,2		\$494,900	2,009	3	24-Sep-04 \$246.34
8 Highland Rd	Westford 6,2,2		\$453,000	2,053	2	1-Sep-04 \$220.65
6 Technology Drive	Chelmsford 6,2,2		\$355,900	1,745	3	25-Jun-04 \$203.95
6 Technology Drive	Chelmsford 6,2,2		\$359,900	1,745	3	27-May-04 \$206.25
Pondview	Bolton 6,2,2	Proposed 40	\$419,000	1,792		\$233.82
25 Stone	Westford	Sold	\$427,499	1,868		Jun-04 \$228.85
14 Stone Ridge	Westford	Sold	\$427,400	1,868		Mar-04 \$228.80

Proposed by Applicant		1-Jun-04	1-Aug-04		
Mkt Rate-Unit A or B (2 bedroom)	Groton	\$340,000	\$ 340,000	1,796	\$ 189.31

Recommended by H&H Associates			1-Oct-04		
Market Rate Unit	Groton		\$395,000	1,796	\$ 219.93

Future Housing Prices in Groton, Recommended by H&H Associates					
	2004	Inflation	2005	Inflation	2006
Selling Price	\$ 395,000	3%	\$ 406,850	3%	\$ 419,056
Price/ Sq Ft	\$ 219.93		\$ 226.53		\$ 233.33

RICHARD HEATON

178 Ballville Road, Bolton, MA 01740 • 978/779-2892 • rhheaton@rhheaton.com

Public Service

SELECTMAN, TOWN OF BOLTON, *Bolton, MA*

2002 to Present

Elected Selectman on an affordable housing platform. Created the Bolton Affordable Housing Partnership with the express purpose of working with developers to introduce affordable housing to the community. Received \$2.0 Million from HUD to build 28 units of senior housing on land donated by the Town for the project. Received approval from DHCD for the Bolton Certification of Compliance for Affordable Housing Plan. Petitioning the state legislature to create the Bolton Affordable Housing Trust.

CHAIR AND MEMBER OF BOLTON BOARD OF APPEALS, *Bolton, MA*

1992 to 2002

Responsible for zoning activities for the Town.

40B Consulting

H & H ASSOCIATES LLP, *Bolton, MA*

2002 to Present

Consultant offering a portfolio of services to assist a Board of Appeals review comprehensive permits. These include reviewing the proforma, managing the process, securing peer review resources and monitoring the project. Clients include 25 communities including— Acton, Harvard, Boxborough, Norwell, Middleborough, Stoughton, West Boylston, Medway and Marion.

Career Experience

H & H ASSOCIATES LLP, *Bolton, MA*

1996 to 2002

Consultants specializing in “Turning concepts into real businesses.” Included raising funds, developing and implementing strategic marketing, sales, manufacturing plans.

Bull Information Systems, Consultant, *Billerica, MA*

Developer of Information Systems and Smart Cards. Developed business plan defining the market potential of smart cards and Internet Service Providers. Defined and implemented the start up. Plan approved to invest \$3M in smart cards and \$8M in Internet Services.

ESI Technology Corporation, COO/CFO, *Natick, MA*

Object-oriented software developer. Created a strategy and secured \$500K from private investors to grow an object-oriented database software company.

Mirage Technology, Consultant, *Newton, MA*

Venture capital management group specializing in technology startups. Generated a plan to raise funds for a new PC data acquisition company. Secured a buyer and \$3M of funding from two investors to finance the start up of a PC hardware and software data acquisition instrumentation company.

KEITHLEY INSTRUMENTS INC.

1994 to 1996

President, Acculex, Inc/ General Manager, Keithley MetraByte Inc. *Taunton, MA*

Manufacturer of precision instruments and data acquisition equipment.

Instituted a customer driven hardware and software engineering plan and developed a new distributed data acquisition hardware and software product line. Balanced direct sales, manufacturers reps, distributors, system integrators and resellers to support all customers and grew sales 13%, reduced SG&A 3% the results shifted ROA from negative to positive 17% that contributed a tripling of stock from \$9 to \$30 per share.

DIGITAL EQUIPMENT CORPORATION, *Maynard, MA*

1967 -

1993

\$14B provider of dedicated open client/server computing solutions.

VP, GENERAL MANAGER, TECHNICAL OEM GROUP, *Stow, MA*

Profitably grew \$500M computer systems sales to Technical OEM customers.

P&L responsibility for a business unit measured on sales growth and PBT.

Focused resources on primary markets (telecommunications, process control, medical equipment, and discrete manufacturing) and grew sales by 20%. Built a sales and marketing organization targeting Japan, Germany, Italy, France, UK, Canada and US and provided direct support for 600 major customers worldwide. Developed embedded engineering plan and established a \$10M VME business. Grew revenue 21% to \$592M, PBT 18.5% (101% budget).

NEW VENTURES MANAGER, *Marlboro, MA*

Evaluate and fund new business start-ups from internal operations.

Broad, open charter to generate new business. In total invested \$2M to produce \$213M of new incremental sales. Started up Technical OEM Group and generated new sales of \$90M per year, created components business, which produced \$100M per year of new business, invested in text retrieval joint venture and created \$15M per year and developed three new imaging products and generated \$8M per year.

GROUP CORPORATE PROCUREMENT MANAGER, *Maynard, MA*

Responsible for evaluation, contracting and procurement of \$500 million per year.

Managed 100 sub-contracting and purchasing professionals world wide. Reviewed and approved procurement and construction of multiple plants, equipment and material to build mini computers

PURCHASING AND MATERIALS MANAGER, *San German, Puerto Rico*

Managed purchasing and materials functions of computer assembly plant.

Built and expanded two manufacturing plants and several assembly lines. Managed purchasing function of ten people and materials function of 25 people

PROCUREMENT SUPERVISOR, *Maynard, MA*

Supervised buyers and sub-contract administrators.

Sub-contracted and supervised the construction of several production assembly lines.

Managed a procurement team of six buyers

TEXAS INSTRUMENTS INC., *Attleboro, MA*

1966 -

1967

Leader in development of semiconductor products and metal composites.

SUB-CONTRACTING PURCHASING MANAGER

Represented procurement on a team constructing a new ten million building. Managed multiple contracting and construction projects involving estimating, contracting and negotiation with numerous contractors. Competitively bid the construction of a three-mile water line.

EDUCATION

BS, Industrial Distribution, Clarkson College, Potsdam, NY	1966
Business Management Program, Harvard University, Cambridge, MA	1978
Program for Senior Executives, MIT Sloan School, Cambridge, MA	1986

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